

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5149 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAMATSINGH G RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MR SURESH M SHAH for Petitioner  
MR H.L. JANI for the respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/02/1998

CAV JUDGEMENT

1. The petitioner, a Range Forest Officer (as he then was) of the Forest Department of the Government of Gujarat, filed this Special Civil Application under Article 226 of the Constitution of India and prayed for issuance of a writ of mandamus or any other writ, order or direction to the respondents, directing them to pay to the petitioner the amount of G.P.F. accumulated in his Account No.PGJU/71 and the amount of pension payable to him from 1.1.1985, and to go on paying the same month to

month and the arrears during the period; and the arrears of salary payable to the petitioner for the period during which he was on sick leave, before his retirement.

2. The petitioner entered into the Government service when he was appointed as Bid Guard on 1st October, 1949. Thereafter he was promoted to the next higher post and, ultimately, he came to be promoted to the post of Range Forest Officer on 27.7.1984. The petitioner gave a notice for his voluntary retirement, seeking it from 1.1.1985. The voluntary retirement was sought, as per what the petitioner has contended in the Special Civil Application, on the ground of his ill-health. From the facts which have been stated in the memo of the petition, it comes out that the petitioner was on leave, may be on the medical ground, from 16th December, 1982 to 3rd May, 1984 and again from 17.8.1984 to 31.12.1984. The grievance of the petitioner is that, though he has give a notice for his voluntary retirement from 1.1.1985, yet he has not been informed anything in the matter till the lapse of the period of three months and, therefore, he acquired a right of voluntary retirement with effect from 1.1.1985. According to the petitioner, despite the fact that he stood voluntarily retired from 1.1.1985, he has not been given the retirement benefits, though he made the application in this respect to respondent No.1 and, hence, this Special Civil Application before this Court.

3. This Special Civil Application is contested by the respondents. They filed a detailed affidavit in reply. The defence of the respondents in the reply, briefly stated, is as follows. The first plea that has been taken is that the petition deserves to be dismissed on the ground that the petitioner has suppressed material facts before this Court. According to the respondents, a Departmental Inquiry was pending against the petitioner for the grave misconduct of misappropriation of Government money and for preparing bogus vouchers. A charge sheet was also served upon the petitioner. Besides, a criminal case was also filed against the petitioner for the charges of corruption by the Anti-Corruption Bureau. In view of the above facts, the petitioner, what the respondents urged in the reply, was not allowed to retire voluntarily and a decision in that regard was taken by the Chief Conservator of Forests, who vide his letter dated 19th February, 1985 informed the Conservator of Forest about the refusal to grant permission to the petitioner for the voluntary retirement. Thereafter, the petitioner was also informed of this fact by the Deputy Conservator of Forests vide

his letter dated 8.3.1985. Another plea which has been taken is that the petitioner should have resumed his duties and then he could have applied for voluntary retirement; but instead of resuming his duties, he conveniently avoided the same under the guise of medical difficulties and sent the notice for his voluntary retirement.

4. The petitioner has not filed any rejoinder to the reply filed by the respondents and, as such, the averments made therein stand uncontroverted. So it is uncontroverted fact that a departmental inquiry was pending against the petitioner for the misconduct of misappropriation of the Government money and for preparing bogus vouchers, and that a criminal case was also pending against him for the charges of corruption. The fact that the Chief Conservator of the Forest Department did not accept the request of the petitioner to permit him to go on voluntary retirement and that this was communicated to the petitioner by the Deputy Conservator of Forests vide his letter dated 8.3.1985 also stands uncontroverted. The petitioner filed this petition on 20th December, 1985. So, this petition is filed by the petitioner after a period of more than six months from the date of the letter of the Deputy Conservator of Forests, aforesaid.

5. The learned counsel for the petitioner contended that the voluntary retirement of the petitioner stood accepted on 1.1.1985 as the respondents have not passed any order declining the prayer of the petitioner on or before 1.1.1985. It is next contended that the request for voluntary retirement of the petitioner stood automatically accepted on 1.1.1985 for the reason aforesaid and even if a decision at a later point of time has been taken by the Chief Conservator of Forests to decline the prayer of the petitioner, it is of no consequence or it has no legal effect.

6. On the other hand, Mr. H. L. Jani, learned counsel for the respondents, contended that there is no question of any automatic acceptance of the request of the petitioner for voluntary retirement with effect from 1.1.1985, even if the order declining the prayer has not been passed on or before 1.1.1985. Unless the request of the petitioner to permit him to go on voluntary retirement is accepted by passing the order, he continues to be in the employment and the relationship of employer and employee also continues; and the petitioner cannot take any shelter on the doctrine of automatic acceptance or deemed acceptance of the prayer for voluntary

retirement. It is next contended by the learned counsel for the respondents that, in the cases where departmental inquiries are pending and the criminal case is also there, and, more so on the charges of misappropriation of Government money, preparation of vouchers/documents and corruption, the prayer for voluntary retirement of an employee/officer is normally not accepted by the department. Lastly, it is contended that this petition deserves to be dismissed on the ground of suppression of material and relevant facts by the petitioner. He submitted that the fact that the petitioner's prayer for voluntary retirement has not been accepted and that the said decision was communicated to him, has been concealed by him. According to him, these facts were very material and relevant in the present case. By concealing these facts, the petitioner has taken the benefit of first getting issued the notice to the respondents and then the Rule to the respondents and, as such, only on this ground alone, the petition deserves to be dismissed.

7. I have given my thoughtful consideration to the contentions raised by the learned counsel for the parties.

8. There is no dispute between the parties on the fact that the day on which the petitioner submitted his notice for voluntary retirement from the services, a departmental inquiry was pending against him for the grave misconduct of misappropriation of Government money and for preparing the bogus vouchers. The criminal case was also pending against him for the charge of corruption. The Conservator of Forests vide its letter dated 19th February, 1985 declined to accept the request of the petitioner to go on voluntary retirement and this decision has been communicated to the petitioner by the Dy. Conservator of Forests vide its letter dated 8-3-1985 i.e. before the filing of this special civil application by the petitioner before this Court.

9. The petitioner in the special civil application has very conveniently avoided to disclose the facts, (i) that the departmental inquiry was pending against him for the serious charges of misappropriation of Government money and for preparing bogus vouchers, (ii) that the criminal case was also pending against him for the charge of corruption, and (iii) that the respondent No.1 has declined to accept the prayer of the petitioner to accept his request for voluntary retirement and that fact has been informed to the petitioner by the respondent No.2 vide its letter dated 8-3-1985. These are the very relevant and material facts to the controversy which has arisen in the present case and non-disclosure of the same

by the petitioner is certainly a deliberate suppression of material facts from this Court. I find sufficient merits in the contention of the counsel for the respondents that only on this ground this writ petition deserves to be dismissed. By concealing these material facts, the petitioner has persuaded this Court to issue the notice to the respondents and then the Rule.

10. It is a well settled law that as a matter of course or right, the petitioner is not entitled to the writ of certiorari or a writ of mandamus. Even if the Court finds some merits in the case of the petitioner, it may decline to interfere in the matter under Article 226 of the Constitution where it feels that there is no failure of justice in the case. The petitioner against whom there are serious charges of corruption as well as misappropriation of Government money and preparing of bogus vouchers which are the subject matter of the departmental inquiry as well as in the criminal case and looking to Rule 161 (aa)(ii) of the Bombay Civil Services Rules, 1959, (hereinafter referred to as 'the Rules, 1959'), it cannot be said that the refusal to accept the request of the petitioner to go on voluntary retirement will result in causing any prejudice to him.

11. It is true that the refusal to accept the request of the petitioner to go on voluntary retirement has not been communicated to him before 1-1-1985 but still in view of the aforesaid facts of this case and particularly the proviso to Rule 161 (aa)(ii) of the Rules, 1959, which empowers the appointing authority to withhold the permission to retire a Government servant who is under suspension or against whom departmental proceedings are pending or contemplated and who seeks voluntary retirement, it cannot be said by a stretch of imagination that any prejudice will be caused to the petitioner. Contrary to it, if such a person against whom the departmental inquiry of the serious charges of misappropriation of Government money and preparation of bogus vouchers as well as the criminal case on the corruption charges is pending, is allowed to go on voluntary retirement on technical grounds, it will not be in larger public interest. On proof of charges of misappropriation of Government money as well as preparation of bogus vouchers in the departmental inquiry, minimum punishment would have been and should have been of dismissal or removal from the services. Reference in this respect may have to the decision of the Apex Court in the case of Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra reported in 1997 (1) SCC 299. Similarly, on the conviction of the

petitioner by the Criminal Court in the corruption case the consequential order would have been of removal or dismissal from the services. If the prayer of the petitioner for allowing him to go on voluntary retirement is accepted then he will get all the retirement benefits and in fact it will be a reward to him though he has been chargesheeted with serious misconduct of misappropriation of Government money and preparation of bogus vouchers and also a criminal case for corruption.

12. The matter may be looked into from another aspect also. The petitioner admittedly entered in the Government service on 1st October, 1949. He has given the notice of voluntary retirement from 1-1-1985 and at that time as per his own case he was having to his credit the services of 35 years. So within few years after 1-1-1985 in normal course the petitioner would have reached the age of superannuation. In view of this fact otherwise also, no useful purpose would be served in case now the request of the petitioner for voluntary retirement is granted. It is fruitful to have reference in this respect to the decision of the Apex Court in the case of Balbir Singh Negi vs. Union of India and Ors. reported in JT 1996 (4) SC 126. In this case though the claim of the appellant therein for withdrawal of his notice for voluntary retirement was found to be legal but still the Court has declined to interfere in the matter on the ground that he had attained the superannuation in normal circumstances and it is held that no useful purpose would be served by giving the direction to permit him to withdraw his application. Here is also a case where the petitioner would have been now in the normal course attained the age of superannuation long back and no purpose would be served to give the direction to the respondents to consider him to be voluntarily retired from 1-1-1985. The learned counsel for the petitioner has not made known to the Court what ultimately done by the respondent in the departmental enquiry and the result of the criminal case. In the service matters it is always advisable and desirable to bring on the record of the case the latest position of the state of affairs, which precisely has not been done by the petitioner in this case.

13. So far as the contention raised by the learned counsel for the respondents regarding the dismissal of this petition on the ground of suppression of material facts is concerned, reference may have to my own decision given in special civil application No.3306/84 decided on 4-2-1995.

14. In the result, this special civil application

fails and the same is dismissed. Rule discharged.

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